

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN BIRRENKOTT,
PAUL HAVLOVITZ,
STEVE CICHY,
MICHAEL CAVINS and
JON MOYER

Appeal 2006-1127
Application 10/712,970
Technology Center 3700

Decided: September 28, 2006

Before KIMLIN, GARRIS, and JEFFREY T. SMITH, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1 through 6 and 8 through 33. We AFFIRM-IN-PART.

Independent claim 1 is representative of the subject matter on appeal and is set forth below:

1. A spraying device comprising:

a cartridge containing a first liquid, the cartridge being removably connected to a sprayer body, the cartridge being oriented such that gravity exerts a downward force on the first liquid;

the sprayer body comprising:

a conduit for receiving a second liquid;

a movable valve structure having first and second liquid passageways, the first passageway communicating with the first liquid from the cartridge and the second passageway communicating with the second liquid flowing from the conduit;

a manual actuator positioned in operative relationship with the movable valve structure enabling movement of the valve structure between at least three discrete positions including:

a) a first position enabling the second liquid to flow through the valve structure to create a reduced pressure in the valve structure which draws the first liquid out of the cartridge and into the valve structure whereby the first and the second liquids mix to form an outlet stream which flows through the valve structure;

b) a second position enabling the second liquid only to flow through the valve structure and blocking the flow of the first liquid through the valve structure, and

c) a third position blocking the first and the second liquids from flowing through the valve structure; and

an orifice disposed in the spraying device for metering a predetermined amount of the first liquid from the cartridge into the valve structure when the valve structure is in the first position to achieve a predetermined ratio of the first liquid to the second liquid in the outlet stream.

The Examiner relies upon the following references as evidence of anticipation and obviousness:

Packard	US 2,991,939	July 11, 1961
Spencer	US 3,797,741	March 19, 1974
Norman	US 4,878,619	November 7, 1989
Shanklin	US 6,578,776 B1	June 17, 2003

Claims 1 through 5, 8, 9, 11, 12, 14 through 17, 19 through 21, 23 through 25, 27 through 29, and 31 through 33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Norman.

Claims 10, 13, 18, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Norman.

Claims 6, 22, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Norman in view of Packard.

OPINION

For the reasons set forth below, we sustain the rejections of claims 1 through 5, 8, 9, 11, 12, 14, 15, and 17 under 35 U.S.C. § 102(b) over Norman, of claims 10, 13, and 18 under 35 U.S.C. § 103(a) over Norman and of claim 6 under 35 U.S.C. § 103(a) over Norman in view of Packard.

We will not sustain the rejection of claims 16, 19 through 21, 23 through 25, 27 through 29, and 31 through 33 under 35 U.S.C. § 102(b) over

Norman, of claim 26 under 35 U.S.C. § 103(a) over Norman and of claims 22 and 30 under 35 U.S.C. § 103(a) over Norman in view of Packard.

REJECTION UNDER 35 U.S.C. § 102(b) OVER NORMAN¹

Claims 1 through 5, 8, 9, 11, 12, 14 through 17, 19 through 21, 23 through 25, 27 through 29, and 31 through 33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Norman.

Norman is directed “to a hand-held spray gun having an interchangeable and disposable cleaning fluid cartridge wherein the gun has a selector valve for alternatively drawing fluid from the cartridge” (col. 1, ll. 7-10). Figure 1 of Norman shows a spray gun 12 comprising a disposable cartridge 10 releasably attached thereto (col. 2, ll. 11-12). The liquid from the cartridge 10 is drawn through inlet port 116 via valve cylinder pin 28 (col. 2, ll. 19-23; col. 4, ll. 1-4). Spray gun 12 includes a rotatable selector valve 82 that has two passageways, one to allow passage of water through a

¹ We note that, for the first time, Appellants advance arguments concerning claims 4 and 9 on pages 4 and 5 of the Reply Brief that were not presented in the Brief. According to 37 C.F.R. § 41.37(c)(vii):

Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately [emphasis added].

In the Brief, claims 4 and 9 were argued together with claims 1-3, 5, 8, 11, 12, and 14-17 (Br. 7-10). Since claims 4 and 9 were not separately argued in the opening Brief, the arguments raised for the first time in a Reply Brief are considered waived. *Cross Medical Products, Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1321 n.3, 76 USPQ2d 1662, 1683 n.3 (Fed. Cir. 2005).

channel 112 via conduit 80 (Figure 3; col. 3, ll. 16-19, 40-43) and an inlet port 116 to allow passage of the fluid in cartridge 10 (Figure 3; col. 3, l. 66 to col. 4, ll. 1-4). Valve 82 is manually rotated “by turning selector valve switch knob 120 which is attached to valve neck 122.” (col. 3, ll. 56-57). Norman’s selector valve 82 is disclosed to be rotatable between a cleaning mode (Figure 3A) and a rinsing mode (Figure 3B). The cleaning mode allows for passage of the cartridge 10 fluid and of water to form a mix that will be dispensed through the fluid nozzle conduit 94 (col. 4, ll. 7-9). The rinsing mode allows for the passage of just the water (col. 4, ll. 43-52).

We refer to the Examiner’s exposition of the rejection in pages 3 through 14 of the Answer and proceed to address the issues before us.

We first address independent claim 1. Appellants argue that Norman does not disclose the claim limitation “cartridge containing a first liquid . . . [being] oriented such that gravity exerts a downward force on the first liquid” (Br. 8). According to Appellants:

The claimed cartridge 12 is oriented to enable gravity assisted flow of the first liquid from the cartridge which in combination with the low pressure created by the water flow at the Venturi location . . . facilitates flow of the first liquid out of the cartridge. The orientation of the cartridge eliminates the need for any internal tube such as the tube 34 disclosed in Norman [*id.*].

The Examiner responds that “[a]ny object subjected to gravity by definition experiences a downward force The recitation [in the claim] does not in any way define the orientation of the cartridge or that gravity assists the flow of the first liquid” (Answer 16).

In reply, Appellants argue:

The orientation limitation is of significant consequence in devices of the present invention since it assists liquid flow while doing away with the prior art pickup tubes and also with the check valves at the bottom of the tubes. Norman teaches a downwardly hanging cartridge having a pickup tube that could not enable liquid flow on a gravity feed basis. . . . However, in Norman the force of gravity is something to be overcome and this is done by the pickup tube 34 and a sufficient "vacuum" in the valve 82. There is no teaching in Norman that by placing the cartridge in a new orientation, the force of gravity may be used to help the operative function of the apparatus [Reply Br. 4].

We are unpersuaded by Appellants' argument. It is well settled that a limitation of the specification must not be read into a claim where no express statement of the limitation is included therein. *Comack Comm., Inc. v. Harris Corp.*, 156 F.3d 1182, 1186-87, 48 USPQ2d 1001, 1005 (Fed. Cir. 1998); *In re Priest*, 582 F.2d 33, 37, 199 USPQ 11, 15 (CCPA 1978); *In re Prater*, 415 F.2d 1393, 1405, 162 USPQ 541, 551 (CCPA 1969). Appellants argue that "[t]he claimed cartridge 12 is oriented to enable gravity assisted flow of the first liquid from the cartridge" (Br. 8). However, the language of the claim is devoid of structural or functional limitations consistent with Appellants' arguments. To read the claim as argued by Appellants would impermissibly read a limitation into claim 1. *LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336, 1344, 76 USPQ2d 1724, 1731 (Fed. Cir. 2006). Thus, we agree with the Examiner that the language of claim 1

does not “define the orientation of the cartridge or that gravity assists the flow of the first liquid” (Answer 16).

Appellants also argue that Norman does not disclose “the [claim 1] limitation ‘a manual actuator (. . . positioned) [sic] in operative relationship with the movable valve structure enabling movement of the valve structure between at least three discreet [sic, discrete] positions’” (Br. 8). Appellants argue that “the Norman valve 82 moves only between two positions for controlling the cartridge liquid. A different valve, the trigger mechanism 76, turns the water on and off. . . . The Norman trigger mechanism does not enable movement of the valve 82 between three discreet [sic, discrete] positions” (*id.*).

The Examiner contends:

Even . . . [if] the valve structure 82 [of Norman] only rotates in one direction and is only free to rotate in a 180 degree range, the valve structure 82 has an infinite number of positions between the two extreme positions shown in figures 3A and 3B. The valve structure 82 is not a digital valve. It cannot be placed in the position of Figure 3A and then placed in the position of 3B without experiencing intermediate positions. When the valve structure 82 is rotated and the outer surface 117 complete[ly] seals the flow path of conduit 80 and 130, flow of the first liquid in cartridge 10 and the flow of the second liquid in conduit 80 are blocked [Answer 17].

Appellants reply:

There is no teaching in Norman of a third position for the valve 82. A separate trigger mechanism 76 opens and closes the water flow through the conduit 74.

Norman does not teach that his valve 82 blocks water flow, contrary to the examiner's condition that such a third blocking position is inherent because he states that the valve 82 can be stopped between the only two positions Norman teaches. A position between those shown in Norman's FIGS. 3A and 3B is not taught by Norman, and there is no teaching that when in such an "in between" position the valve would block the first and second liquids [Reply Br. 2].

Appellants further argue that "the seals 86 function only to prevent leakage upwardly and downwardly away from the valve as the device is depicted in FIG. 3" and that "[w]ater ends up in the nozzle 104 regardless of whether the water flows through the valve or around the valve" (*id.*).

If a prior art device inherently possesses the capability of functioning in the manner claimed, anticipation exists regardless of whether there was recognition that it could be used to perform the claimed function. *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). When relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *See Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Patent App. & Int. 1990).

We are unpersuaded by Appellants' argument that Norman's valve 82 would not block the path of the second liquid [water] when rotated to a position between the cleaning mode and the rinsing mode. We observe that Appellants do not contest that Norman's valve 82 can rotate at least 180 degrees between the cleaning mode (Figure 3A) and the rinsing mode (Figure 3B). Appellants primarily argue that "[t]here is no teaching in

Norman of a third position for the valve 82” and that “there is no teaching that when in such an ‘in between’ position the valve would block the first and second liquids” (Reply Br. 2).

The Examiner has provided a technical reasoning as to why rotation of the valve 82 to an “in between” position would block the path of the two fluids. Specifically, the Examiner contends that “there is a mid position where passageway 112 is perpendicular to conduit 80; in such position, neither the first liquid in the cartridge 10 nor the second liquid from conduit 80 can flow through valve structure 82” (Answer para. bridging 4-5).

While Appellants speculate that “[w]ater ends up in the nozzle 104 regardless of whether the water flows through the valve or around the valve” (Reply Br. 2), we agree with the Examiner’s rationale that Norman’s valve 82 is free to rotate at least in a 180 degree range to a position “in between” where the flow of the second liquid [water] in conduit 80 and, hence the flow of the first liquid in cartridge 10, would be blocked. That is, Norman’s valve 82 has the inherent capability of performing the function at issue. On this record, Appellants have offered no persuasive argument and no evidence to the contrary.

Claims 2 through 5, 8, 9, 14, 15, and 17, all of which depend from claim 1, were not separately argued and, therefore, stand or fall with claim 1.

Accordingly, we sustain the rejection of claims 1 through 5, 8, 9, 14, 15, and 17 under 35 U.S.C. § 102(b) as being anticipated by Norman.

Regarding claim 11, Appellants state that it “includes the limitation that the ‘cartridge is capable of being disconnected from the sprayer bottle to enable the first liquid to be dispensed from the cartridge by squeezing the cartridge in an inverted position’” (Br. 9). Appellants argue that “[t]here is

no teaching in Norman that the cartridge 10 is capable of being disconnected, inverted and by squeezing dispensing the liquid within the cartridge 10” (*id.*). Further, Appellants argue that “if the cartridge 10 is not completely full, inverting the cartridge will place the upstream end of the tube 34 out of the liquid and no liquid will flow” (*id.*).

The Examiner contends:

If ball 44 will block tube 34 in an inverted position, ball 44 will also block tube 34 when subjected to the vacuum created at orifice 116, which is clearly not the case. Ball 44 prevents flow into the cartridge and not flow out of the cartridge. Applicant further argues that Norman's cartridge 10 cannot be dispensed in the inverted position unless it is completely full. Applicant's claim does not require that the cartridge be not completely full. When Norman's cartridge 10 is completely full, it can be dispensed in an inverted position until the liquid level drops below ball valve 40. Finally, claim 11 merely requires the capability to so perform [Answer 18].

In further support of their position, Appellants argue:

This limitation is not found in the Norman device which if disconnected and inverted and then squeezed will not operate because physics dictates that the squeezing force on the liquid will be directly transmitted to the ball 44 through the orifice 50 and the ball will be pushed up against the bottom end of the tube 34 to block the tube's lower opening preventing the flow of any liquid [Reply Br. 5].

We are unpersuaded by Appellants’ argument that the cartridge of Norman would not operate as recited in claim 11. The Examiner has

provided a technical reasoning to support his determination that Norman's cartridge will not block the flow of the cartridge liquid out of the inverted cartridge. *Levy*, 17 USPQ2d at 1464. This reasoning essentially is that if ball 44 were capable of blocking the flow of the cartridge liquid when pushed against tube 34 upon inverting the cartridge, then ball 44 would also block the flow of the liquid from the cartridge when operating in the cleaning mode.

We note that, in the cleaning mode, the vacuum in tube 34 can only draw the liquid from the cartridge through orifice 50 and into tube 34 by causing the ball 44 to be lifted off orifice 50 and against tube 34 (Fig. 1). If the vacuum forces ball 44 into sealing engagement with the bottom of tube 34 in the cleaning mode, there would be no liquid flow from the cartridge and Norman's device would not fulfill its intended function. Norman only discloses that ball 44 "is forced into sealing engagement . . . to close and seal orifice 50" when it operates in the rinsing mode (col. 4, ll. 41-43). Appellants' argument does not address this particular issue raised by the Examiner.

Thus, we determine that the Examiner has provided a convincing technical reasoning in support of his position that Norman's cartridge inherently possesses the capability recited in claim 11 which has not been persuasively rebutted by Appellants.

Accordingly, we sustain the rejection of claim 11 under 35 U.S.C. § 102(b) as being anticipated by Norman.

Regarding claim 12, Appellants state that it "includes the limitation that the 'cartridge includes a check valve for keeping the cartridge sealed until the first liquid is drawn out of the cartridge'" (Br. 9). According to

Appellants, “[t]he Norman check valve 40 is not normally closed. The only time the Norman check valve closes is when the valve 82 is intentionally positioned to create a high pressure in the tube 34. This causes the ball 44 to block the orifice 50” (Br. para. bridging 9-10).

In response, the Examiner contends that “[c]laim 12 does not recite that the check valve has to be normally closed” (Answer 18).

In reply, Appellants argue:

The teaching of Norman is that a seal occurs only when water is pushed down the tube 34 due to a higher pressure at the top of the tube than at the bottom of the tube. There is no proof that the ball 44 seals at any other time or under any other conditions” [Reply Br. 6].

We disagree with the Appellants’ argument concerning the operation of the check valve of Norman. Referring to Figure 1 of Norman, we note that Norman’s check valve 40 is placed at the bottom of pickup tube 34. It appears that check valve 40 will normally be closed because ball 44, through gravity, will rest upon orifice 50 when the spray gun is not in operation. It is not until the valve 82 is switched to the position illustrated in Figure 3A that a “decrease in pressure creates a vacuum in inlet port 116, thereby drawing cleaning fluid from cartridge 10 through valve 40, tube 34, and valve cylinder pin 28” (col. 4, ll. 1-3). Looking at Norman’s Figure 1, the only way for the cleaning fluid from cartridge 10 to flow through valve 40 is for the vacuum to lift ball 44 sufficiently to allow the flow into the pickup tube 34. Viewed from this perspective, Norman’s check valve 40 performs the claim 12 function of “keeping the cartridge sealed until the first liquid is drawn out of the cartridge.”

Accordingly, we sustain the rejection of claim 12 under 35 U.S.C. § 102(b) as being anticipated by Norman.

Claim 16 recites “the cartridge includes a secondary threaded closure.” Appellants argue, “Norman does not teach a secondary threaded closure” (Br. 10).

The Examiner contends:

Norman teaches a secondary threaded closure 24. Norman shows the neck 24 having threads on the external surface above flange 22 in figures 1, 2A and 2B. Claim 16 does not further limit the secondary threaded closure. The claim reads on Norman's neck 24. Neck 24 is a closure of cartridge 10 and is threaded [Answer 18].

Appellants reply that “the wavy features above the flange 22 are not threads but beads to allow a cap to snap-on the cartridge. . . . Hence, there is no teaching or disclosure of threads included in the Norman cartridge” (Reply Br. 6).

We agree with Appellants. We note that the cartridge 10 of Norman is attached to the spray gun 12 by a “[m]echanism 14 [that] incorporates a spring loaded release switch 16 which cooperates with latching tabs 18 and 20 to engage latching flange 22 on neck 24 of cartridge 10 to secure cartridge 10 to gun 12” (col. 2, ll. 13-16). This structure in Norman does not correspond to the claimed “secondary threaded closure.”

Accordingly, we will not sustain the anticipatory rejection of claim 16 over Norman.

We now consider independent claim 19. The most significant difference between independent claim 19 and independent claim 1 is that claim 19 specifically requires “a valve structure allowing passage of the

second liquid through the valve structure to create a reduced pressure that draws the first liquid out of the cartridge and into the valve structure without the need for a dip tube.”

Appellants argue that “Norman teaches a system having a dip tube, the tube 34” (Br. 10).

The Examiner’s position is described on pages 8-9 of the Answer as follows:

[Claim 19] merely requires that the valve structure “allow” the function “passage of the second liquid through the valve structure to create a reduced pressure that draws the first liquid out of the cartridge and into the valve structure without the need for a dip tube.” The expansion of flow from passage 114 to passage 118 in [Norman’s] valve structure 82 creates a reduced pressure and draws the first liquid into the valve structure whether or not the dip tube 34 is present. Merely removing the dip tube 34 from the device of Norman does not prevent the pressure reduction at orifice 116 in figure 3A. As long as liquid is present at or supplied to pin 28, the liquid flow through passageway 112 will perform the function of creating a reduced pressure that draws the first liquid out of the cartridge and into the valve structure.

In reply, Appellants argue:

[T]here is no teaching that Norman's device functions . . . [without pickup tube 34 as the Examiner contends] and there is no support cited that the Norman device is even capable of such an operation. The prior art is replete with liquid containing cartridges hanging downwardly from a sprayer and all have pickup tubes. This evidence strongly suggests that one skilled in the art would

consider a pickup tube to be a necessary element and not an optional one as the examiner indicates [Reply Br. 7].

We do not disagree with the Examiner's aforequoted position that "removing the dip tube 34 from the device of Norman does not prevent the pressure reduction at orifice 116 . . . [, and thus] liquid flow through passageway 112 will perform the function of creating a reduced pressure that draws the first liquid out of the cartridge and into the valve structure" (Answer 8-9; emphasis added). However, as implicitly indicated by the emphasized portion of this quotation, it is only after dip tube 34 is removed that Norman's device would physically possess the actual capability of performing the claim 19 function of "allowing passage . . . to create a reduced pressure that draws the first liquid out of the cartridge . . . without the need for a dip tube." Moreover, the issue of removing Norman's dip tube and thereby obtaining the capability of performing the claim function is a question of obviousness under § 103, not anticipation under § 102.

Claims 20, 21, 23 through 25, all depend from claim 19 and, therefore, stand or fall with claim 19.

Accordingly, we will not sustain the rejection of claims 19 through 21 and 23 through 25 under 35 U.S.C. § 102(b) as being anticipated by Norman.

Independent claim 27, like independent claim 19, requires the valve structure to allow "the second liquid to flow through the valve structure to create a low pressure that draws the first liquid out of the cartridge and into the valve structure without the need for a dip tube." Thus, we will not sustain the rejection of claim 27 as well as of claims 28, 29, and 31-33, all

dependent from claim 27, under 35 U.S.C. § 102(b) as being anticipated by Norman, for reasons given above.

REJECTION UNDER 35 U.S.C. § 103(a) OVER NORMAN

Claims 10, 13, 18, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Norman.

Since Appellants' arguments treat these claims as a group in the Brief and the Reply Brief, we address them likewise. We focus on claims 10, 13 and 18 only as claim 26 is dependent from claim 19, the rejection of which has not been sustained.

Claims 10 and 13 respectively recite "the cartridge is made of flexible plastic" and "the check valve includes a duckbill portion and an umbrella portion." The Examiner contends that these claim features are known in the prior art by taking official notice and by citing references in support of this official notice (Answer 14-15). For the limitation of claim 18 of a hose coupler with an anti-siphon unit, the Examiner relies on Appellants' Specification disclosure on page 5, paragraph 26 to evince it is known in the prior art (Answer 15). The Examiner's conclusion of obviousness provides reasons why it would have been obvious to modify Norman's device to include the features recited in these claims (Answer 14-15).

In the Brief, Appellants seem to have challenged the Examiner's reliance on official notice to meet these limitations (Br. para. bridging 15-16). In response to Appellants' apparent challenge, the Examiner provided the above noted citations of references and of Appellants' Specification.

Appellants reply:

It is . . . noted, that all of the section 103 rejections are based on Norman alone or in combination with another reference. However,

based upon appellant's contentions hereinabove regarding the rejections under section 102 of claims 1, 19 and 27, Norman does not contain all of the limitations of any of the rejected claims and the examiner does not contend that the limitations, absent from Norman, are found in other cited references.

. . . Norman alone and in all of the cited combinations fail to meet this requirement. Thus, the examiner has not met his burden of making a proper rejection [Reply Br. 11].

We are unpersuaded by Appellants' general argument that the cited combinations fail to include all of the limitations of the rejected claims because the argument fails to particularly refute the Examiner's respective conclusions of obviousness pertaining to each of claims 10, 13, and 18. Appellants have provided no specific analysis in support of their argument that distinguishes each rejected claim from the respective combination of teachings applied against it. Thus, we are constrained to agree with the Examiner's conclusions of obviousness regarding claims 10, 13 and 18 for the reasons advanced by the Examiner (Answer 14-15).

Accordingly, we sustain the obviousness rejection of claims 10, 13, and 18 over Norman.

As indicated above, claim 26 depends from claim 19, the rejection of which has not been sustained. Accordingly, we will not sustain the obviousness rejection of claim 26 for the reasons presented above.

REJECTION UNDER 35 U.S.C. § 103(a) OVER NORMAN IN VIEW OF
PACKARD

Claims 6, 22, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Norman in view of Packard.

Packard teaches the use of a metering disc 55 to regulate the amount of fluid that flows from a cartridge (Figures 1 and 2; col. 3, lines 20-23).

Claim 6 recites the metering orifice of claim 1 to be “on a metering disc that is adjustable to select one of several orifice sizes.” The Examiner relies on Packard to teach a metering disc 55 in a spray gun/cartridge arrangement (Answer 15). The Examiner concludes that “[i]t would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the metering disc of Packard to the device of Norman to regulate/control the flow [of the cartridge liquid]” (Answer para. bridging 15-16).

Appellants argue that “even if a metering disc was to be included in the Norman invention, the resulting product still would not possess all of the claimed limitations set forth [in claim 1]” (Br. 17). Appellants also argue that “Packard adds nothing more than disclosure of a rotatable disk with a series of holes in conjunction with a spraying device consisting of a spray gun and a container. Therefore, a combination of Norman and Packard does not disclose, teach or suggest the limitations found in claim[] 6” (Br. para. bridging 17-18).

The Examiner responds that “Packard is not relied on for the limitations found in [claim 1, from which claim 6 depends]. Rather, Packard is only relied on for the teaching of the rotatable metering disk 55. The

motivation, to regulate/control the flow, can be found in Packard at column 3, lines 20-23” (Answer para. bridging 21-22).

In reply, Appellants again rely on the general argument that the cited combination fails to include all of the limitations of the rejected claim (Reply Br. 11).

We have addressed this general argument with respect to claims 10, 13 and 18 and are unpersuaded by it for reasons discussed above. We add the following primarily for emphasis and completeness.

In addressing Appellants’ arguments concerning a lack of disclosure, teaching or suggestion to combine the references, the Examiner particularly points to column 3, lines 20-23 of Packard, which specifically states that “a slide plate is so mounted that any one of a series of orifices or openings therethrough may be located to control the flow of liquid into the spray nozzle.” Appellants have presented no arguments addressing the motivation highlighted by the Examiner other than a conclusory statement that the combination fails to meet the limitations of claim 6.

Thus, we agree with the Examiner that “it would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the metering disc of Packard to the device of Norman to regulate/control the flow [of the fluid from the cartridge]” (Answer para. bridging 15-16).

Accordingly, we sustain the obviousness rejection of claim 6.

Claims 22 and 30 depend from claims 19 and 27, respectively, the rejections of which have not been sustained. Accordingly, we will also not sustain the obviousness rejection of claim 22 and 30 for the reasons presented above.

CONCLUSION

The Examiner's rejection of claims 1 through 5, 8, 9, 11, 12, 14, 15, and 17 under 35 U.S.C. § 102(b) as being anticipated over Norman is affirmed.

The Examiner's rejection of claims 16, 19 through 21, 23 through 25, 27 through 29, and 31 through 33 under 35 U.S.C. § 102(b) as being anticipated over Norman is reversed.

The Examiner's rejection of claims 10, 13, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Norman is affirmed.

The Examiner's rejection of claim 26 under 35 U.S.C. § 103(a) as being unpatentable over Norman is reversed.

The Examiner's rejection of claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Norman and Packard is affirmed.

The Examiner's rejection of claims 22 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Norman and Packard is reversed.

Thus, the decision of the Examiner is AFFIRMED-IN-PART.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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